



Yisroel Steinberg <ysteinberg@lipsiuslaw.com>

Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

Lauren Riddle <lriddle@psdfirm.com>

Thu, Aug 22, 2024 at 1:01 PM

To: Alexander Sperber <asperber@lipsiuslaw.com>, Yisroel Steinberg <ysteinberg@lipsiuslaw.com>

Cc: Phillip Rakhunov <prakhunov@psdfirm.com>

Alex and Yisroel,

Below is a chart referencing the correct bates numbers for documents contained in Exhibit 9.

Bates Number in Exhibit 9:	Corrected Bates Number
RF_004519	RF_001200 (produced on or around June 20, 2023)
RF_004523	RF_001204 (produced on or around June 20, 2023)
RF_004527	RF_001208 (produced on or around June 20, 2023)
RF_004535	RF_001329 (produced on or around June 20, 2023)
RF_004539	RF_001333 (produced on or around June 20, 2023)
RF_004571	RF_003506 (produced on or around September 11, 2023)
RF_004575	RF_003510 (produced on or around September 11, 2023)
RF_004579	RF_003514 (produced on or around September 11, 2023)
RF_004580-82	RF_003362-64(produced on or around September 11, 2023)
RF_004531	RF_001259 (produced on or around June 20, 2023)
RF_004583-84	RF_003360- 61(produced on or around September 11, 2023)

Thanks,

Lauren

From: Phillip Rakhunov <prakhunov@psdfirm.com>
Sent: Thursday, August 22, 2024 12:24 PM
To: Alexander Sperber <asperber@lipsiuslaw.com>
Cc: Yisroel Steinberg <ysteinberg@lipsiuslaw.com>; Lauren Riddle <lriddle@psdfirm.com>
Subject: RE: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

Adding Lauren here, who is helping with this issue.

It appears that when we downloaded the documents to use for MSJ, the database somehow applied new bates numbers. Documents in Exhibit 9 were produced in discovery but with different bates numbers. We will provide correct bates numbers.

While you are considering this issue, we should talk about jointly seeking an extension of the pretrial deadlines.

Thanks.

From: Alexander Sperber <asperber@lipsiuslaw.com>
Sent: Wednesday, August 21, 2024 1:39 PM
To: Phillip Rakhunov <prakhunov@psdfirm.com>
Cc: Yisroel Steinberg <ysteinberg@lipsiuslaw.com>
Subject: Re: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

Phil,

I have been looking over the documents that you referenced. I am a bit confused by the supporting materials attached as Exhibit 9 to your declaration.

Please advise as to the date on which the documents in that exhibit were produced. Please forward me that email.

I am attaching documents that you produced that have the exact same bates stamped numbers as those in Exhibit 9 (marked Attorneys' Eyes Only), but which you will note are different from those in the exhibit. Please advise.

Alex

Alexander J. Sperber

Lipsius-Benham Law LLP

80-02 Kew Gardens Rd., Suite 1030 | Kew Gardens, NY 11415

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On Tue, Aug 20, 2024 at 9:37 AM Phillip Rakhunov <prakhunov@psdfirm.com> wrote:

Alex,

I agree on not wasting time but believe that an effort towards negotiating a resolution is worthwhile. Putting aside the issue of whether there was a material breach by your clients as to the quality/nature of the gloves, a fundamental disagreement seems to be that your clients believe that Rock Fintek got paid about \$2.5 million more than it did by Ascension for the gloves. I direct your attention to paragraphs 5-7 of Kato's declaration (ECF 146-8) and supporting materials included in exhibit 9 to my declaration (ECF 146-9) demonstrating that they payments made to Rock Fintek by Ascension on 01/13/21, 02/23/21, 02/25/21, 03/03/21, 03/19/21, 03/22/21, and 04/08/21, totaling \$2,542,116.25 were not for the gloves at issue in this lawsuit but were for 3PLY Masks that Rock Fintek sold to Ascension.

Happy to go through these with you.

We also should discuss scheduling. I understand that we both agree that the existing pretrial deadlines are problematic.

Let me know when you have time to speak in the next day or so.

Thanks,

Phil

From: Alexander Sperber <asperber@lipsiuslaw.com>

Sent: Monday, August 19, 2024 2:49 PM

To: Phillip Rakhunov <prakhunov@psdfirm.com>

Subject: Re: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

Phil,

At this point I think that the parties are too far apart to make mediation worthwhile.

We are open to the idea of mediation, but only if it looks like there is some reasonable possibility that it might succeed. There's no point in all of us wasting a day of time for no reason.

If we walk into mediation with your clients thinking that they are going to get paid, and my clients expecting *they* are the ones who are going to get paid (which is where I understood things stood during our conversation), I have a very hard time seeing any kind of successful result.

You mentioned on our call that you had not yet spoken with your clients. If they have a different perspective on settlement than you did, maybe we can revisit.

Alex

Alexander J. Sperber

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On Fri, Aug 16, 2024 at 9:32 AM Phillip Rakhunov <prakhunov@psdfirm.com> wrote:

Hi Alex, any feedback regarding our discussion earlier this week? Thanks.

From: Alexander Sperber <asperber@lipsiuslaw.com>

Sent: Tuesday, August 13, 2024 12:38 PM

To: Phillip Rakhunov <prakhunov@psdfirm.com>

Subject: Re: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

Ok, no problem.

Alexander J. Sperber

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On Tue, Aug 13, 2024 at 12:35 PM Phillip Rakhunov <prakhunov@psdfirm.com> wrote:

Sorry, stuck on a call. Will try you as soon as I am off.

From: Phillip Rakhunov
Sent: Tuesday, August 13, 2024 11:24 AM
To: asperber@lipsiuslaw.com
Subject: RE: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

Alex, do you have time for a quick call today? Thanks.

From: Phillip Rakhunov <prakhunov@psdfirm.com>
Sent: Monday, August 12, 2024 1:29 PM
To: Alexander Sperber <asperber@lipsiuslaw.com>; Avram Frisch <frischa@avifrischlaw.com>
Cc: Lauren Riddle <lriddle@psdfirm.com>; Yisroel Steinberg <ysteinberg@lipsiuslaw.com>
Subject: Re: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

I am but trying to figure out exactly what given other case developments.

From: Alexander Sperber <asperber@lipsiuslaw.com>
Sent: Monday, August 12, 2024 1:23:16 PM
To: Avram Frisch <frischa@avifrischlaw.com>
Cc: Phillip Rakhunov <prakhunov@psdfirm.com>; Lauren Riddle <lriddle@psdfirm.com>; Yisroel Steinberg <ysteinberg@lipsiuslaw.com>
Subject: Re: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

Phil -- Are you still requesting an extension from the court? I'm working on scheduling on my end, and clarity on the deadlines would be helpful.

Alexander J. Sperber

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On Tue, Aug 6, 2024 at 12:48 PM Alexander Sperber <asperber@lipsiuslaw.com> wrote:

Sure, no problem on our end.

Alexander J. Sperber

Lipsius-Benhaim Law LLP

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On Tue, Aug 6, 2024 at 12:48 PM Avram Frisch <frischa@avifrischlaw.com> wrote:

Considering what is left of your case, take as much time as you need from my perspective.



THE LAW OFFICE OF
AVRAM E. FRISCH LLC

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1 University Plaza, Suite 119 Hackensack, NJ 07601
201-289-5352
Fax: 866-883-9690

From: Phillip Rakhunov <prakhunov@psdfirm.com>
Sent: Tuesday, August 6, 2024 12:40 PM
To: Avram Frisch <frischa@avifrischlaw.com>; asperber@lipsiuslaw.com <asperber@lipsiuslaw.com>
Cc: Lauren Riddle <lriddle@psdfirm.com>
Subject: FW: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC
Memorandum & Opinion

Avi and Alex,

Regarding the pretrial deadlines that the Court set below, Lauren and I start back-to-back jury trials on September 9 in Albuquerque, NM (expected to go 2 weeks), and October 2 trial in District of Maine (3-4 weeks). Are you amenable to an extension for the pretrial order and MILs to early November?

Thanks,

Phil

From: NYSD_ECF_Pool@nysd.uscourts.gov <NYSD_ECF_Pool@nysd.uscourts.gov>
Sent: Tuesday, August 6, 2024 11:44 AM
To: CourtMail@nysd.uscourts.gov
Subject: Activity in Case 1:22-cv-05276-PAE Kitchen Winners NY Inc. v. Rock Fintek LLC Memorandum & Opinion

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U.S. District Court

Southern District of New York

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The following transaction was entered on 8/6/2024 at 11:44 AM EDT and filed on 8/6/2024

Case Name: Kitchen Winners NY Inc. v. Rock Fintek LLC

Case Number: 1:22-cv-05276-PAE

Filer:

Document Number: 164

Docket Text:

OPINION AND ORDER re: [132] LETTER MOTION for Extension of Time to Amend *Anticipated Laboratory Expert Report* addressed to Judge Paul A. Engelmayer from Phillip Rakhunov dated December 13, 2023. filed by Rock Fintek LLC, [108] LETTER MOTION for Extension of Time to Complete Discovery as a Result of Adorama Parties Discovery Delays and Misconduct addressed to Judge Paul A. Engelmayer from Phillip Rakhunov dated October 25, 2023. filed by Rock Fintek LLC, [118] LETTER MOTION for Extension of Time to File Response/Reply as to [115] LETTER MOTION for Leave to File Motion for Summary Judgment addressed to Judge Paul A. Engelmayer from Avram E. Frisch dated 11/3/2023. Request **ASSENTED TO** by filed by Rock Fintek LLC, [155] LETTER MOTION for Oral Argument on Summary Judgment Motions and for Clarification as to Page Limits addressed to Judge Paul A. Engelmayer from Phillip Rakhunov dated April 5, 2024. filed by Rock Fintek LLC, [136] MOTION for Summary Judgment . filed by Joel Stern, JNS Capital Holdings LLC, [137] MOTION for Summary Judgment . filed by Kitchen Winners NY Inc., [138] MOTION for Summary Judgment . filed by Joseph Mendlowitz, Adorama, Inc.. For the foregoing reasons, the Court hereby grants each motion for summary judgment in part, and denies each in part. To recap the rulings on summary judgment: As to all parties, the Court dismisses Rock Fintek's theories of damages based on lost profits and based on ongoing exposure to Ascension. The Court dismisses Rock Fintek's breach of warranty claim against Kitchen Winners; Rock Fintek's covenant of good faith and fair dealing and warranty claims against Adorama, and its alter-ego theory of liability for Adorama under the breach of contract claim (as abandoned); Rock Fintek's breach of express warranty claim against Mendlowitz (as abandoned); and Rock Fintek's breach of contract, fraudulent inducement, and breach of warranty claims against Stem. That leaves the following claims surviving in this action: Kitchen Winners' claims against Rock Fintek for breach of contract (under the SPA only) and for unjust enrichment. Rock Fintek's breach of contract claims, under the SPA, against Kitchen Winners and Adorama. Rock Fintek's unjust enrichment claims against Kitchen Winners and Adorama. Rock Fintek's breach of contract claim against Kitchen Winners as to the one-off transactions. This claim may proceed for the recovery of nominal damages only. Rock Fintek's breach of the covenant of good faith and fair dealing claim against Kitchen Winners. This claim may proceed for the recovery of nominal damages only. Rock Fintek's breach of contract claim against JNS. This claim may proceed for the recovery of nominal damages only. All claims against individual defendants have been dismissed. The case will now proceed to trial. The remaining parties are directed to file a joint pretrial order, compliant with the Court's Individual Rules, by Tuesday, September 17, 2024, and to contemporaneously file any motions in limine. Any oppositions to motions in limine are due Tuesday, September 24, 2024. The Clerk of Court is respectfully directed to terminate all pending motions. **SO ORDERED.** (Motions due by 9/17/2024., Pretrial Order due by 9/17/2024., Responses due by 9/24/2024) (Signed by Judge Paul A. Engelmayer on 8/6/2024) (tg)

1:22-cv-05276-PAE Notice has been electronically mailed to:

Ira S Lipsius ilipsius@lipsiuslaw.com, asperber@lipsiuslaw.com, clipsius@lipsiuslaw.com, dbenhaim@lipsiuslaw.com, ijeger@lipsiuslaw.com, mfrancisco@lipsiuslaw.com, mzunggoldberg@lipsiuslaw.com, nsingh@lipsiuslaw.com, pmanela@lipsiuslaw.com, rtorres@lipsiuslaw.com, ysteinberg@lipsiuslaw.com

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Lauren A. Riddle lriddle@psdfirm.com

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Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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